IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2497 OF 2006

Krishna S. Shetty ..Petitioner.

Vs.

Colaba Central Co-operative
Consumer Wholesale & Retail Sales Ltd. ..
Respondent.

...

Mr. N.M. Ganguli for the Petitioner.
Mr. J.P. Cama, Senior Advocate i/b Sanjay Udeshi & Co. for the Respondent.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

9th October, 2006.

P.C. :

1. The order of the Industrial Court partly allowed the complaint of unfair labour practices preferred by the Petitioner. The reliefs that were claimed in the complaint were to the following effect :

"(a) that this Hon'ble Court be pleased to enquire into the unfair labour practices and to hold and declare that the respondents have engaged in and are continuing to engage in unfair labour practices under Items 3, 5 and 9 of Schedule IV of the M. R. T. U. and P. U. L. P. Act, 1971;

(b) that this Hon'ble Court be pleased to pass an order and mandatory injunction restraining the respondents from

transferring the complaint from the higher grade of Accountant to the grade of a Departmental Manager in any Branch pertaining to the transfer letter dated 11.3.2002 issued by the respondent No.3;

(c) that this Hon'ble Court be pleased to pass an order and mandatory injunction restraining the respondents from filling in the post of Assistant General Manager without first considering the claim of the complainant."

Thus, the first part of the challenge in the complaint was against the transfer that was effected by which the Petitioner was posted from the post of an Accountant to the post of Branch Manager. The Tribunal granted relief to the Petitioner and directed the Respondent to withdraw the order of transfer. That part of the order was accepted by the Respondent. Counsel appearing for the Respondent fairly states that the order has not been challenged to that extent.

2. The Petitioner is before the Court with a grievance that he was not promoted from the post of Accountant to the post of Assistant General Manager. Now a perusal of prayer clause (c) in the complaint which has been extracted above will show that the relief that was sought was an injunction restraining the Respondent from filling up the post of Assistant General Manager without

considering the claim of the Petitioner. The Industrial Court has held that the representation of the Petitioner for promoting him was turned down by a letter dated 11th June, 2002 on the ground that there were candidates more senior to the Petitioner. Therefore, if the Petitioner was aggrieved either by the promotions that were effected in the meantime or by the non-grant of promotion to him, it was necessary for the Petitioner either to amend the complaint by impleading those persons who would be affected or to institute a fresh complaint. The Petitioner did neither. The prayer for injunction was rendered infructuous once promotions were effected. In these circumstances, no relief could have been granted to the Petitioner on the complaint as it stands. It is needless to add that it would be open to the Petitioner to adopt necessary steps in law to espouse his grievance. The Petition is dismissed.